

Rules of Trial Procedure

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Rule 79. Special judge selection: circuit, superior, and probate courts

- (A) **Application.** When the appointment of a special judge is required under Trial Rule 76, the provisions of this rule constitute the exclusive manner for the selection of special judges in circuit, superior, and probate courts in all civil and juvenile proceedings. Trial Rule 79.1 constitutes the exclusive manner for the selection of special judges in all actions in city, town, and the Marion county small claims courts.
- (B) **Duty to notify court.** It shall be the duty of the parties to advise the court promptly of an application or motion for change of judge.
- (C) **Disqualification or recusal of judge.** A judge shall disqualify and recuse whenever the judge, the judge's spouse, a person within the third degree of relationship to either of them, the spouse of such a person, or a person residing in the judge's household:
- (1) is a party to the proceeding, or an officer, director or trustee of a party;
 - (2) is acting as a lawyer in the proceeding;
 - (3) is known by the judge to have an interest that could be substantially affected by the proceeding; or
 - (4) is associated with the pending litigation in such fashion as to require disqualification under the *Code of Judicial Conduct* or otherwise.

Upon disqualification or recusal under this section, a special judge shall be selected in accordance with Sections (D), ~~(E)~~, and (H) of this rule.

- (D) **Agreement of the parties.** Within seven (7) days of the notation in the Chronological Case Summary of the order granting a change of judge or an order of disqualification, the parties may agree to an eligible special judge. The agreement of the parties shall be in writing and shall be filed in the court where the case is pending. Alternatively, the parties may agree in writing to the selection of an eligible special judge in accordance with Section (H). Upon the filing of the agreement, the court shall enter an order

appointing such individual as the special judge in the case and provide notice pursuant to Trial Rule 72(D) to the special judge and all parties or appoint a special judge under Section (H).

A judge appointed under this section shall have ~~fifteen (15)~~seven (7) days from the date the appointment as special judge is noted in the Chronological Case Summary to decide whether to accept the case ~~in accordance with Section (G). The filing of an acceptance vests jurisdiction in the special judge. An oath or additional evidence of acceptance of jurisdiction is not required.~~

This provision shall not apply to criminal proceedings or election contests involving the nomination or election of the judge of the court in which the contest is filed.

- (E) ~~**[Reserved]** Deleted, eff. Jan. 1, 20xx. **Selection by court.** In the event the parties fail to agree or are not permitted to agree to the appointment of a special judge under Section (D) of this rule, they may consent to the appointment of a special judge by the judge before whom the case is pending. A party in an ex parte proceeding may also agree to the appointment of a special judge under this provision. If the judge before whom the case is pending is unavailable, the parties may agree to the appointment of a special judge by the regular judge of the court.~~

~~Upon being advised that the parties agree to the selection of a special judge by the court, the court shall enter an order appointing an eligible special judge in the case and provide notice pursuant to Trial Rule 72(D) to the special judge and all parties. A judge appointed under this Section shall have fifteen (15) days to decide whether to accept the case and enter his or her acceptance in accordance with Section (G).~~

- (F) ~~**[Reserved]** Deleted eff. Jan. 1, 20xx. **Selection by Panel.** In the event a special judge is not selected under Sections (D) or (E) of this rule, this section shall be used for the selection of a special judge.~~

- ~~(1) **Naming of Panel.** Within two (2) days of deciding that a special judge must be appointed under this section, the judge before whom the case is pending shall submit a panel of three persons eligible under Section J to the parties for striking. In the event~~

~~the judge before whom the case is pending is unavailable to submit the panel, the regular judge of the court where the case is pending shall submit the panel to the parties.~~

- ~~(2) Striking From Panel. In an adversary proceeding, each party shall be entitled to strike one judge from the panel. In an ex parte proceeding, the sole party shall be entitled to strike one judge from the panel. The moving party shall be entitled to strike first, and shall have seven (7) days from the day the clerk mails the panel to the parties to strike. The nonmoving party, or the Clerk of the Court in an ex parte proceeding, shall have seven (7) days from the date of the first strike to make the final strike.~~
- ~~(3) Failure of Nonmoving Party or Clerk to Strike. If the nonmoving party, or the Clerk of the Court in an ex parte proceeding, fails to strike within the time required by subsection (2), the moving party shall have seven (7) days from that time to make the final strike.~~
- ~~(4) Failure of Moving Party to Strike. If the moving party fails to strike under either subsection (2) or (3) within the time limits required by those subsections, the judge who submitted the panel shall resume jurisdiction of the case.~~
- ~~(5) Appointment of Special Judge. The judge who submitted the panel shall appoint the judge remaining on the panel as special judge in the case.~~
- (G) [Reserved] Deleted eff. Jan. 1, 20xx**~~**Acceptance of appointment.** A special judge selected under Sections (D), (E), or (F) of this rule shall have fifteen (15) days from the date of appointment to decide whether or not to accept the case and enter his or her decision. The filing of the acceptance vests jurisdiction in the special judge. An oath or additional evidence of acceptance of jurisdiction is not required.~~
- (H) Selection under local rule.** ~~In the event a special judge does not accept the case under Sections (D), (E) or (F), or a judge disqualifies and recuses under Section (C),~~ In the event a judge disqualifies and recused under Section (C), or does not accept the case under Section (D), the appointment of an eligible special judge shall be made pursuant to a local rule approved by the Indiana Supreme Court which provides for the following:

- (1) appointment of persons eligible under Section J who: a) are within the administrative district as set forth in Administrative Rule 3(A), or b) are from a contiguous county, and have agreed to serve as a special judge in the court where the case is pending;
- (2) the effective use of all judicial resources within an administrative district; and
- (3) certification to the Supreme Court of Indiana of cases in which no judge is eligible to serve as special judge or the particular circumstance of a case warrants selection of a special judge by the Indiana Supreme Court.

A person appointed to serve as special judge under a local rule must accept jurisdiction in the case unless the appointed special judge is disqualified pursuant to the Code of Judicial Conduct, ineligible for service under this rule, or excused from service by the Indiana Supreme Court. The order of appointment under the local rule shall constitute acceptance. An oath or additional evidence of acceptance of jurisdiction is not required.

(I) Discontinuation of service or Unavailability of as special judge.

(1) In the event a special judge assumes jurisdiction and thereafter ceases to act for any reason, including the timely granting of a ~~except the granting of a timely~~ motion for change of judge, ~~the regular judge of the court where the case is pending shall assume jurisdiction, provided such judge has not previously served in the case and is otherwise eligible to serve. If the regular judge does not assume jurisdiction under this section, the~~ a successor special judge shall be ~~selected~~appointed in accordance with Sections (D) and (H) of this rule. ~~If the special judge ceases to act by reason of the timely granting of a motion for change of judge, the special judge shall appoint a successor special judge in accordance with Sections (D), (E), (F), and (H) of this rule.~~

(2) In the event a special judge assumes jurisdiction and is thereafter unavailable for any reason on the date when a hearing or trial is scheduled, the regular judge, judge pro tempore, temporary judge, or senior judge of the court where the case is pending may assume temporary jurisdiction, provided such judge has not previously served in the case and is otherwise eligible to serve. If the regular judge, judge pro tempore,

temporary judge, or senior judge does not assume jurisdiction under this section, such hearing or trial shall be reset to a date when the special judge is available.

(J) Eligibility. Any regular judge of a Circuit, Superior, or Probate Court, a senior judge, or a person serving as a full-time judicial officer in a court of record, including a person who has been a member of a panel for selection, is eligible for appointment by a trial court as a special judge unless this judicial official:

- (1) has previously served as judge or special judge in the case; except that whenever a court has granted an order for a change of venue to another county, the judge granting the change of venue may be appointed as special judge for that cause in the receiving county if the judge granting the change, the receiving judge, and all of the parties to the cause agree to such appointment;
- (2) is disqualified by interest or relationship; or
- (3) is excused from service as special judge by the Indiana Supreme Court.

A special judge need not be a resident of the county where the case is pending, but accessibility should be considered in making the selection. Senior judges shall be eligible for service as special judge only in courts in which the senior judge is currently appointed by the Indiana Supreme Court to serve as senior judge.

(K) Appointment by Indiana Supreme Court. Upon the certification of a request for appointment of a special judge under Trial Rules 53.1, 53.2, 60.5, I.C. 34-13-5-4, as added by P.L. 1-1998, SEC.8, governing public lawsuits, and this rule, the Supreme Court may appoint any person eligible for service under Section (J) or any member of the Bar of this state as special judge. The order of appointment of a special judge by the Indiana Supreme Court shall be noted in the Chronological Case Summary, entered in the Record of Judgments and Orders, and served on all parties in the proceeding in accordance with Trial Rule 72(D) by the Clerk of the trial court. Such order vests jurisdiction in the special judge, and an oath shall only be required for members of the Bar appointed under this Section.

(L) Continuation of Special Judge Jurisdiction. A special judge shall retain jurisdiction of the case, through judgment and post-judgment, including without limitation,

proceedings to enforce the judgment or to modify or revoke orders pertaining to custody, visitation, support, maintenance and property dispositions and post-conviction relief unless:

- (1) a specific statute or rule provides to the contrary; or
- (2) the special judge is unavailable by reason of death, sickness, absence, or unwillingness to serve.

(M) Transfer of Proceeding. In the event the individual selected to serve as special judge in the case is a regular judge of a court within the county and such court has subject matter jurisdiction of the proceeding, such judge may transfer the case without the assessment of costs to that judge's court for all further proceedings. In the event the individual selected is the regular judge of a court outside of the county where the case is pending and such court has subject matter jurisdiction in like cases, the parties and the judge may agree to a change of venue to such judge's court for all further proceedings. Assessment of statutory change of venue fees shall be shared by the parties as agreed or, failing agreement, as ordered by the court.

(N) Place of Hearing.

- (1) Absent the transfer of the case as set forth in Section (M), special judges are encouraged to employ procedures such as the use of facsimile transmissions and telephone conferences that reduce the need for travel.
- (2) A special judge may entertain motions and perform all administrative tasks and conferences with counsel in his or her own county.
- (3) All hearings involving in-person testimony by witnesses shall be conducted in the court where the case is pending unless:
 - (a) the parties and the judge agree otherwise on the record, or
 - (b) the hearing is not before a jury and the special judge determines that exceptional circumstances exist such that the matter can only be heard in a timely fashion in his or her own county.

(4) All decisions, orders, and rulings shall be noted promptly in the Chronological Case Summary and, when appropriate, the Record of Judgments and Orders of the court where the case is pending and shall be served in accordance with Trial Rule 72(D). It is the duty of the special judge to effect the prompt execution of this rule. A court is deemed to have ruled on the date the ruling is noted in the Chronological Case Summary.

(5) It is the duty of the judge of the court where the case is pending to assure the availability of facilities and staff for the special judge.

(O) Emergencies. Nothing in this rule shall divest the original court and judge of jurisdiction to hear and determine emergency matters between the time a motion for change of judge is filed and the appointed special judge accepts jurisdiction.

(P) Compensation. A full-time judge, magistrate, or other employee of the judiciary shall not be paid a special judge fee for service as a special judge. A senior judge shall be paid a special judge fee pursuant to Ind.Administrative Rule 5. All other persons serving as special judge shall be paid a special judge fee of twenty-five dollars (\$25.00) per day for each jurisdiction served for the entry of judgments and orders and hearings incidental to such entries. Persons residing outside the county where service is rendered shall be entitled to mileage at a rate equal to other public officials as established by state law, hotel accommodations, and reimbursement for meals and other expenses. Compensation for special judge services shall be paid by the State upon presentation of a claim for such services.